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Petitioning for Grandparent Visitation, State by State

All 50 states allow grandparents to petition the court for visitation rights. This article outlines the general concerns in drafting such a petition, including establishing standing and providing that visitation is in the child's best interests.

By Julie A. Braun

Under the common law, grandparents had no legal rights to visitation with their grandchildren.¹ However, in one form or another, all 50 states have enacted legislation enabling grandparents to petition for visitation with their grandchildren.² In addition, a federal statute now requires states to respect each other's decisions regarding grandparent visitation, making visitation easier to enforce across state lines.³

Although state law governs grandparent visitation, it does not give grandparents an absolute right to visitation. Instead, it allows grandparents to ask the court for reasonable visitation, access

to,⁴ or contact with⁵ their grandchildren. Courts are increasingly active in defining grandparent rights even though the U.S. Supreme Court has yet to decide a case relating to grandparent visitation.⁶ Grandparents first must establish that they have standing to seek the requested relief and, assuming that hurdle is cleared, that visitation is in the grandchildren's best interests.

Who May Petition for Visitation

Each state grandparent visitation statute advises who may petition for visitation privileges. As expected, statutory language specifies that grandparents may seek visitation. Sometimes the language is more detailed and references biological, natural, or adoptive grandparents.⁷ Several statutes expressly recognize that great-grandparents may seek visitation as well.⁸ However, at least one state will not issue a visitation order for step-grandparents.⁹

The verified petition entitled *In re the grandparent visitation of [insert name(s) of petitioner(s)]*¹⁰ seeks visitation under state law by identifying the:¹¹

- Name(s) of the petitioner(s) (that is, the grandparent(s) seeking visitation)
- Names, addresses, and dates of birth of the minor grandchildren with whom visitation is sought
- Name(s) and address(es) of the grandchildren's parent(s)
- Legal relationship between the petitioner(s) and the grandchildren

State law may explicitly provide for grandparent visitation *without petition* if the court finds it is in the grandchildren's best interests to do so.¹²

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Circumstances That Trigger a Grandparent Visitation Petition

The content of grandparent visitation provisions varies from state to state. Most statutes describe a particular event or special circumstance that must occur before a grandparent may petition for visitation. The majority require disruption of an intact¹³ nuclear family, such as the death of one or both parents, legal separation, or marriage dissolution.¹⁴ A minority feature open-ended or wide-open statutes that do not identify special circumstances under which a grandparent may seek visitation.¹⁵ In practice, grandparents are more likely to win visitation if the triggering event involves death, separation, or divorce.

It is important that counsel assert the statutory basis for grandparent visitation on the face of the petition.¹⁶ Sample language might read: "This proceeding is commenced pursuant to [insert cite for relevant grandparent visitation provision] which permits this Court, in instances where a parent has died, to [order] visitation by a grandparent with respect to a grandchild."¹⁷

In addition, a well-drafted petition alleges sufficient facts to warrant a grant of visitation under the statute. The petition must show that the circumstances it describes are like those provided in the statute, or the petition will be denied. Suggested language might include:¹⁸

Commencing on or about _____, 19____, and subsequent to the death of _____, respondent has failed and refused to permit petitioners to visit with, or even communicate with, their grandchild.

During the lifetime of _____, petitioners visited with the child on a regular basis and maintained a rich, full and warm relationship with the child.

The refusal of respondent to permit petitioners visitation with, and even communication with, their grandchild is vindictive and contrary to the child's best interests.

It is particularly important that the child be permitted to have regular contact with the child's [paternal/maternal] family in view of the death of _____.

Upon information and belief, respondent permits [his/her] own parents to visit with the child.

Conclude the grandparent visitation petition with a prayer for relief sought.¹⁹ Suggested language might read:

By reason of the foregoing [referencing earlier paragraphs containing factual allegations offered to support a visitation order], petitioner respectfully appeals to this Court to exercise its discretion, as justice requires, and in the best interests of the child, to make direction for visitation by petitioners with the said child and for such other relief as to the Court may seem just and proper.²⁰

Special Circumstances

The filing of a petition for grandparent visitation may be triggered by the following situations among others:

- One or both of the grandchildren's parents are dead²¹
- Grandchildren's parents' marriage has dissolved²²
- Grandchildren's parents are legally separated²³
- Grandchildren's parents are not currently cohabiting on a permanent or indefinite basis²⁴
- Grandchildren's parents' marriage has been annulled²⁵
- Grandchildren's parents' marriage has been declared invalid²⁶
- One of the parents joins in the visitation petition with the grandparent(s)²⁷
- Parent(s) unreasonably restrict or deny grandparent(s) visitation²⁸
- One or both parents are incarcerated²⁹
- One or both parents are missing or absent³⁰
- Grandchildren have been deserted by parent(s)³¹
- Grandchildren have been abandoned by parent(s)³²
- Parent of grandchildren is physically or mentally incapable of making a decision³³
- Grandchildren placed in a foster home³⁴
- Grandchildren resided with grandparent(s) for statutorily defined period³⁵
- Maternal grandparent is the parent of a parent of a child born out of wedlock³⁶
- Paternal grandparent is the parent of a parent of a child born out of wedlock whose paternity has been acknowledged or judicially recognized³⁷

Open-Ended or Wide-Open Statutes

Open-ended or wide-open statutes do not specify the circumstances under which a grandparent may seek visitation, leaving it to the court's discretion.³⁸ For example, New York law allows visitation "where circumstances show that conditions exist which equity would see fit to intervene."³⁹ Arguably, this allows the attorney to file a petition for reasonable grandparent visitation regardless of the family circumstances (such as the marital status of the children's parents).

Visiting Grandchildren in an Intact Family

A controversial issue in the area of grandparent visitation involves whether grandparents should have the right to visit grandchildren in an intact family.⁴⁰ States differ considerably on whether grandparents should be allowed visitation rights where the parents are still married and the parents and children reside in the same household. Courts also wrestle with this issue.⁴¹ The relationship between grandparent, parent, child, and the state implicates the constitutionally protected interests of due process and equal protection.⁴²

In the majority of states, grandparents lack standing to seek court-ordered visitation while the nuclear family is intact.⁴³ In practice, "[i]t is extremely rare for a court to grant visitation" if the family is intact.⁴⁴ The decisions made by parents about what is in their children's best interests are generally considered outside the ambit of the court absent evidence of parental abuse or neglect.⁴⁵

Attorneys attempting to secure visitation for the grandparents where the grandchild lives with both parents favor the generality of the open-ended or wide-open statutes discussed above.

Visiting Grandchildren Born out of Wedlock

Many statutes fail to mention grandchildren born out of wedlock.⁴⁶ Some expressly provide grandparents standing to seek visitation in this situation.⁴⁷ Others recognize children born out of wedlock, but limit standing for their grandparents. A common limitation allows a petition for grandparent visitation only after a putative father acknowledges paternity or a court recognizes paternity.⁴⁸ It may be possible to seek grandparent visitation where paternity has not been established prior to the petition's filing; however, be prepared to prove the grandchild's paternity in court.⁴⁹

Best-Interests Standard

The paramount consideration for the court in any grandparent visitation decision is the best interests⁵⁰ (and welfare)⁵¹ of the grandchild. This language parallels that of most child custody and visitation laws.⁵² The best-interests standard determines whether and to what extent grandparent visitation should occur. Statutes that fail to define this standard are problematic for the attorney. Unfortunately, most statutes fall into this category. In general, the common denominator of grandparent visitation provisions is the court's discretionary power to determine what constitutes best interests.⁵³

An action for visitation requires pleading and proof that grandparent visitation is in the grandchildren's best interests. A judge generally conducts a full evidentiary hearing of the facts in the particular case to assess whether the grandchildren's best interests will be served by granting or denying visitation.

Factors Determining Best Interests

The court may rely on explicitly defined factors when making its best-interests determination, including:

- Effect of visitation on the relationship between child and parent(s)⁵⁴
- Willingness and ability of the grandparent to facilitate and encourage a close and continuing relationship between child and parent(s)⁵⁵
- Benefits, if any, in maintaining an extended family relationship⁵⁶
- Length and quality of the relationship, if any, between grandchild and grandparent⁵⁷ and the desirability of maintaining that relationship⁵⁸
- Love, affection, and other emotional ties existing between grandparent and grandchild⁵⁹
- Capacity and disposition of the grandparent to give the grandchild love, affection, and guidance⁶⁰
- Whether the grandchild has, in the past, resided with the grandparent for a significant period of time, with or without the child's parent(s)⁶¹
- Whether the grandparent is or was a full-time caretaker for the grandchild for a significant period⁶²
- Time elapsed since the grandchild last had contact with the grandparent⁶³

- Prior interaction between grandparent and parent(s)⁶⁴
- Present relationship between grandparent and parent(s),⁶⁵ including friction between these parties and the effect of such friction on the grandchild⁶⁶
- Age of the grandchild⁶⁷
- Grandchild's reasonable wishes, if he or she is sufficiently mature to express a preference⁶⁸
- Parental preference regarding the requested visitation⁶⁹
- Nature and reasons for parental objection to visitation⁷⁰
- Grandchild's mental and physical health⁷¹
- Whether the grandchild's health or welfare would be harmed unless grandparent visitation is granted⁷²
- Whether visitation would endanger grandchild's physical health or impair his or her emotional development⁷³
- Grandparent's mental and physical health⁷⁴
- Medical and other health needs of the grandchild as affected by visitation⁷⁵
- Capacity and disposition of the grandparent to cooperate in providing the grandchild with health care or alternative care recognized and permitted under state law in lieu of health care⁷⁶
- Time-sharing or visitation arrangements prior to filing the petition⁷⁷
- Effect grandparent visitation will have on the grandchild⁷⁸
- Quantity of visitation time requested and potential adverse impact, if any, that visitation will have on the grandchild's customary activities⁷⁹
- Time available to child and parent(s), giving consideration to parents' work schedule, child's schedule for home, school, and community activities, and child's and parents' holiday and vacation schedules⁸⁰
- History of physical, emotional, or sexual abuse or neglect by the grandparent, whether directed against the grandchild or others⁸¹
- Existing protective order directed to the grandparent⁸²
- Capacity and disposition of the grandparent to cooperate in providing the grandchild with food, clothing, and other material needs during visitation⁸³
- Guardian ad litem recommendation regarding visitation⁸⁴

- Moral fitness of the party seeking visitation⁸⁵
- Good faith⁸⁶ or motivation⁸⁷ of the grandparent in filing the visitation petition
- Motivation of person(s) denying visitation⁸⁸
- Any other appropriate or relevant factor⁸⁹

Tailor any statutory guidance offered on the best-interests standard to the facts of the case. If the statute is silent on what constitutes best interests, rely on case law and grandparent provisions from surrounding states. State child custody and visitation laws are another source where the best-interests standard is likely to appear.

Representative best-interests language might include:

It is in the best interest of [insert grandchild(ren)'s name(s)] to allow grandparent visitation because the Petitioner has been the grandchild(ren)'s full-time caretaker for the last three years prior to the filing of this Petition.

It is in the best interest of [insert grandchild(ren)'s name(s)] to allow grandparent visitation because there are no indications that visitation with the Petitioner would endanger the physical health or impair the emotional development of [insert grandchild(ren)'s name(s)].

Evaluating Statutory Contact and Relationship Requirements

In addition to requiring visitation in the grandchildren's best interest, a court may consider the amount of personal contact⁹⁰ as well as ongoing⁹¹ or meaningful⁹² contact. Further, the court may consider the depth of the relationship between grandparent and grandchild when making its determination.⁹³ Key words or phrases appearing in visitation provisions include:

- Substantial relationship⁹⁴
- Significant relationship⁹⁵
- Viable relationship⁹⁶
- Preexisting relationship⁹⁷

The statute's words or phrases referring to contact or relationship may not be defined; therefore, check case law for insight into how the court historically construes these terms. A literature search may locate law reviews or other practice commentaries discussing the court's inclination.

The contact and relationship provisions become required elements that counsel representing the

grandparents must prove. Obviously, a grandparent's frequent contact and closeness with the grandchild is an important factor in winning visitation time. Marginal contact may translate into less visitation time initially, although visitation might increase as the relationship grows.

Appointing a Guardian ad litem

In some jurisdictions, a child cannot be a witness in any proceeding to determine an award of grandparent visitation.⁹⁸ Moreover, in some jurisdictions, the court will not accept or consider a child's written or recorded statement or affidavit setting forth the child's wishes and concerns regarding grandparent visitation.⁹⁹ In both instances, ask the court to appoint a guardian *ad litem* (GAL) for the grandchildren. Some statutes expressly provide for GAL appointment.¹⁰⁰ The GAL may, for the purpose of ascertaining grandparent visitation rights, participate in the proceedings as if the GAL were a party.¹⁰¹

Consider asking for the appointment of a GAL even if the jurisdiction allows the child to testify in open court. Perhaps a battle over grandparent visitation concerns a child who due to age, shyness, extreme sensitivity, or another reason should not be subjected to testifying in open court.

Considering the Grandchildren's Wishes

The court may be guided by the grandchildren's wishes when making its best-interests determination.¹⁰² In practice, this occurs only if the child is of sufficient age and capable of forming an intelligent opinion.¹⁰³ The children's wishes may reveal themselves in open court; a judge may appoint a GAL to prepare a report for the court on the subject; or a judge may interview the children in chambers. Be advised that an in-chambers off-the-record conference may not be sanctioned in some jurisdictions because the discussion may impair an appellate court from full review of the proceedings below.

Visitation Despite Parental Objection

State law may vest a court with the legal authority to require visitation even over parental objection.¹⁰⁴ In this situation, the grandparent must overcome the rebuttable presumption that the parent's decision to refuse or limit visitation with the grandchildren was reasonable.¹⁰⁵ Counsel should thoroughly

research state and circuit case law to support the grant or denial of visitation in this circumstance. Case law will highlight the fact patterns when the grandparent successfully petitioned for visitation and, conversely, when efforts to compel visitation failed.

Burden

Most state visitation statutes are silent as to the required burden of proof in grandparent visitation matters. In practice, the burden of proving that visitation is in the grandchildren's best interests usually rests with the petitioning grandparent.¹⁰⁶ The objecting party bears the burden of proving such visitation would be detrimental.

Presumption

Beware the rebuttable presumption affecting the burden of proof that grandparent visitation is *not* in the child's best interests where the parents agree that the grandparent should not be granted visitation rights¹⁰⁷ or where the visitation rights of grandparents are presumed to be in the grandchildren's best interests.¹⁰⁸

Imposing Visitation Conditions and Restrictions

The court may order reasonable conditions or restrictions on grandparent visitation.¹⁰⁹ For example, a Florida court may condition visitation it awards to an HIV-positive grandparent upon the grandparent's agreement "to observe measures approved by the Centers for Disease Control and Prevention of the United States Public Health Service or by the Department of Health for preventing the spread of [HIV] to the child."¹¹⁰ In other examples, the court may require that the grandparent:

1. Not attempt to influence any religious beliefs or practices of the grandchildren in a manner contrary to parental preferences;¹¹¹
2. Not engage in, permit, or encourage activities, or expose the grandchild to conditions or circumstances, that are contrary to parental preferences;¹¹² or
3. Not otherwise act in a manner to contradict or interfere with the child-rearing decisions made by the child's parents.¹¹³

Modifying or Terminating a Grandparent Visitation Order

A visitation order cannot be modified or terminated without court approval. The court may modify an order granting or denying visitation whenever modification serves the child's best interests.¹¹⁴ The party seeking modification shoulders the burden of showing that the modification is in the child's best interests.

If visitation was secured in a previous proceeding for marriage dissolution, custody, legal separation, annulment, or establishment of paternity, the grandparents may petition the court to reconsider the provisions of the decree or final order that provide for visitation. In this instance, the petition must assert that circumstances have materially changed since entry of the earlier order or decree.¹¹⁵ In addition, the petition must set forth sufficient facts to support this assertion.

A court may terminate grandparent visitation upon presentation of evidence that a grandparent has "materially violated the terms and conditions" of the visitation order¹¹⁶ or if a parent moves the court to do so based upon a change in circumstances.¹¹⁷

Effect of Adoption on Grandparent Visitation

States differ considerably on whether to award or continue grandparent visitation upon the adoption of the grandchild. Many grandparent visitation statutes fail to reconcile the conflict between grandparent visitation and the rights of adoptive parents. Some draw a distinction between adoption by a step-parent or close relative and adoption by strangers.¹¹⁸ A number extend visitation to biological grandparents when the new spouse of the former son-in-law or daughter-in-law adopts their grandchild.¹¹⁹ Review the termination provisions contained in state adoption laws regarding the post-adoption visitation rights of a child's biological relatives.¹²⁰

Enforcing Grandparent Visitation

A recent federal law ensures reciprocal recognition of grandparents' rights once a state has adjudicated that those rights exist.¹²¹ Further, some grandparent visitation statutes reference the court's enforcement capabilities (such as sanctions and contempt of court).¹²² Upon verified motion by the grandparents, or upon the court's own motion, alleging noncompliance with a visitation order, the

court will determine from the motion, and response to the motion, if any, whether there has been or is likely to be continuing noncompliance.

Better the grandparent's chance of enforcing the visitation order by avoiding vague language in the court order. For example, if the visitation order reads, "Reasonable visitation to be determined by the participants," it becomes difficult to prove that visitation has been denied. Compare with "Petitioner will see her granddaughter on alternate Thursdays from 3 p.m. to 6 p.m." This specificity makes the court inquiry into noncompliance much easier.

Some grandparent visitation statutes provide for an automatic termination of visitation upon adoption; therefore, a grandchild's adoption would preclude the grandparent from enforcing any visitation awarded previously. However, the statute may allow the grandparent continued enjoyment of such visitation after the adoption. Thus, the grandparent would not be precluded from enforcing the court-ordered visitation.

Other Options

Intervene in Pending Proceeding

In some instances, the court's jurisdiction lies dormant until an action is instituted for marriage dissolution, child custody, legal separation, annulment,¹²³ or establishment of paternity.¹²⁴ A grandparent may intervene at the initial stage or during a later modification action, whether instituted by the grandparent or not. A grandparent moving for an order of visitation may not be afforded party status, but may be called as a witness and will be subject to cross-examination by the parties.¹²⁵ The court may conduct the hearing on the petition as part of the pending proceeding or as a separate proceeding. The order creating visitation rights, if one issues, may be incorporated into and made a part of the decree or final order.¹²⁶ In practice, grandparents are highly successful in their attempts to incorporate a grandparent visitation paragraph into a divorce decree.

Mediation

Consider mediation (that is, negotiation aided by a neutral third party) early in the grandparent visitation process. Many grandparent visitation statutes reference mediation.¹²⁷ Upon petitioning for visita-

tion, the court may order mediation and require a good-faith effort to resolve the conflict before returning before a judge. Mediation by court referral may produce a court order for visitation. Alternatively, some statutes require mediation *before* the court entertains a grandparent visitation petition.¹²⁸ Here, mediation takes place as a private initiative that hopes to achieve agreement. Most of these agreements are unenforceable unless the disputing parties or their attorneys file the agreement with the court.

Practice Tips

Notice

In general, the court conducts a hearing to determine whether an order for visitation will issue.¹²⁹ Several grandparent visitation statutes expressly provide for notice to appropriate parties.¹³⁰ At least one remarks that “actual or constructive” notice of the allegations contained in the petition is acceptable.¹³¹ Typically, notice of the hearing’s date, time, and place as well as a copy of the petition is supplied to the grandchildren’s parents in the manner provided by law for service of a summons.¹³² Failure to notify the parents may be a fatal procedural defect.

Request Reasonable Visitation

Propose a reasonable visitation plan. Reasonable visitation is the statutory language for determining the frequency and length of the visits. In determining how much visitation to request, counsel representing the grandparents should look to case law for instruction on what constitutes reasonable visitation.¹³³ In practice, avoid requesting the type of visitation commonly awarded to a noncustodial parent.¹³⁴ Grandparents whose adult children have died do not step into their deceased children’s shoes.¹³⁵ The court will likely grant several hours once or twice a month, with a day or two during the holidays.

Uniquely, under New Mexico law, the court “may issue an order requiring other reasonable contact between the grandparent and the child, including regular communication by telephone, mail or any other reasonable means.”¹³⁶

Supervised Visitation

Consider asking the court in its discretion to order supervised visitation if it appears unlikely that the

court will grant the requested visitation otherwise.¹³⁷

Home Study

In some states, the court may order a home study to assist in determining the best interests of the child.¹³⁸

Educational Program on Grandparents’ Rights

Recommend that clients take advantage of state-developed programs that make grandparents aware of their visitation rights under state law.¹³⁹ In addition, the program may inform divorcing parents as to the utility, to the children, of regular and frequent visitation with their grandparents.¹⁴⁰

Legislative History

Investigate the legislative history of the state grandparent visitation statute. The provision’s history may affect the way the courts analyze the cases that arise under it.

Experts

Rely on experts (such as psychiatrists and psychologists) to support the petition’s visitation demand. Experts are particularly helpful when a statute fails to define “best interests.” Be prepared to engage in a battle of the experts in which one expert testifies that grandparent visitation is in the grandchildren’s best interests and another equally qualified expert testifies that it is not.

Visitation Revocation

Advise the grandparent client of reasons why court-ordered visitation might be revoked. Often, the statute itself contains this information. For example, in Illinois, if an order enters granting visitation privileges to a grandparent who is related to the children through the noncustodial parent, visitation privileges may be revoked if:

1. A court order prohibits the noncustodial parent from any contact with the children and the grandparent uses the visitation privileges as an opportunity for the noncustodial parent to visit with the children;¹⁴¹ or
2. A court order restricts the noncustodial parent’s contact with the children and the grandparent uses the visitation to facilitate contact between the children and the noncustodial parent in a

manner that violates the order restricting the parent's contact.¹⁴²

Endnotes

1. See Ann Marie Jackson, Comment, *The Coming of Age of Grandparent Visitation Rights*, 43 AM. U. L. REV. 563, 573 (1994).
2. ALA. CODE § 30-3-4 (WESTLAW through 1998 Reg. Sess.); ALASKA STAT. § 25.20.065 (Michie, WESTLAW through 1998 2nd Spec. Sess.); ARIZ. REV. STAT. ANN. § 25-409 (West, WESTLAW through 1998 2nd Reg. Sess. and 6th Spec. Sess.); ARK. CODE ANN. § 9-13-103 (Michie, WESTLAW through 1997 Reg. Sess.); CAL. FAM. CODE ANN. §§ 3102, 3103, 3104 (West, WESTLAW through 1998); COLO. REV. STAT. ANN. §§ 19-1-117 and 19-1-117.5 (West, WESTLAW through 1998 2nd Ex. Sess.); CONN. GEN. STAT. ANN. § 46b-59 (West, WESTLAW through Gen. St. Rev. to 1-1-99); DEL. CODE ANN. tit. 10, § 944 (WESTLAW through 1998 Reg. Sess.); FLA. STAT. ANN. ch. 752 (West, WESTLAW through 1998 2nd Reg. Sess.); GA. CODE ANN. § 19-7-3 (WESTLAW through 1998 Reg. Sess.); HAW. REV. STAT. ANN. § 571-46.3 (Michie, WESTLAW current through 1998 Reg. Sess. of 19th Legislature); IDAHO CODE § 32-719 (WESTLAW through 1998 Reg. Sess.); 750 ILL. COMP. STAT. ANN. 5/607 (eff. June 1, 1999) (West, WESTLAW through 1998 Reg. Sess.) (eff. June 1, 1999); 755 ILL. COMP. STAT. ANN. 5/11-7.1 (West, WESTLAW through 1998 Reg. Sess. (eff. June 1, 1999); IND. CODE ANN. §§ 31-17-1 through 31-17-5-10 (West, WESTLAW through 1998 2nd Reg. Sess.); IOWA CODE ANN. § 598.35 (West, WESTLAW current with amendments received through 2/1/1999); KAN. STAT. ANN. § 38-129 (WESTLAW through 1998 Reg. Sess.); KY. REV. STAT. ANN. § 405.021 (Banks-Baldwin, WESTLAW through 1998 Reg. Sess.); LA. REV. STAT. ANN. § 344 (West, WESTLAW current through 1998 1st Ex. Sess. and Reg. Sess. Acts); ME. REV. STAT. ANN. tit. 19, §§ 1001-1004 (West, WESTLAW through 1997 2nd Sp. Sess.); MD. CODE ANN., FAM. LAW §§ 9-102, 9-105 (WESTLAW through 1998 Reg. Sess.); MASS. GEN. LAWS ANN. ch. 119, §§ 23, 39D (West, WESTLAW current through 1998 2nd Ann. Sess.); MICH. COMP. LAWS ANN. § 722.27 (West, WESTLAW current through 1998 Reg. Sess.); MINN. STAT. ANN. § 257.022 (West, WESTLAW through 1998 1st Sp. Sess.); MISS. CODE ANN. § 93-16-3 (WESTLAW through 1998 Reg. Sess.); MO. ANN. STAT. § 452.402 (West, WESTLAW through 1998 2nd Reg. Sess.); MONT. CODE ANN. § 40-9-102 (WESTLAW through 1997 Reg. Sess.); NEB. REV. STAT. § 43-1802 (WESTLAW through 1998 1st Sp. Sess.); NEV. REV. STAT. § 125A.330 (WESTLAW current through 1997 Reg. Sess. Adj. July 7, 1997); N.H. REV. STAT. ANN. § 458:17-d (WESTLAW through 1998 Reg. Sess.); N.J. STAT. ANN. § 9:2-7.1 (West, WESTLAW current through L. 1998 c. 153); N.M. STAT. ANN. § 40-9-2, as amended, 1999 N.M. LEGIS. 73 (S.B. 174) (eff. July 1, 1999) (Michie 1998); N.Y. DOM. REL. LAW § 72 (McKinney, WESTLAW current through L. 1999 chs. 6-13); N.C. GEN. STAT. § 50-13.2 (WESTLAW current through 1998 Cum. Supp.); N.D. CENT. CODE § 14-09-05.1 (WESTLAW through 1997 Reg. Sess.); OHIO REV. CODE ANN. §§ 3109.05.1(B)(1), 3109.11, 3109.12 (West, WESTLAW current through 1999 portion of 123rd G.A.); OKLA. STAT. ANN. tit. 10, § 5 (West, WESTLAW through 1998 1st Ex. Sess.); OR. REV. STAT. § 109.121 (WESTLAW through 1997 Reg. Sess. and 1998 Cum. Supp.); 23 PA. CONS. STAT. ANN. §§ 5311-5313 (West, WESTLAW through 1998 Reg. Sess.); R.I. GEN. LAWS § 15-5-24.1 (WESTLAW through 1998 Reg. Sess.); S.C. CODE ANN. § 20-7-420(33) (Law. Co-op, WESTLAW through 1998 Reg. Sess.); S.D. CODIFIED LAWS § 25-4-52 (Michie, WESTLAW through 1998 Reg. Sess.); TENN. CODE ANN. § 36-6-302 (WESTLAW through 1998 Reg. Sess.); TEX. FAM. CODE ANN. § 153.433 (West, WESTLAW through 1997 Reg. Sess.); UTAH CODE ANN. § 30-5-2 (WESTLAW through 1998 Gen. Sess.); VT. STAT. ANN. tit. 15, §§ 1012, 1013 (WESTLAW through 1997 Adj. Sess.); VA. CODE ANN. § 20-124.2 (Michie 1998) (eff. Mar. 27, 1999); WASH. REV. CODE ANN. § 26.09.240 (West, WESTLAW through 1998 Reg. Sess.); W.VA. CODE §§ 48-2B-1 to -12 (WESTLAW through 1998 1st Ex. Sess.); WIS. STAT. ANN. § 767.245 (West, WESTLAW current through 1997 Act 338, published 7/3/1998); WYO. STAT. ANN. § 20-7-101 (Michie, WESTLAW through 1998 Reg. Sess.).
3. Child Custody and Visitation Act, PUB. L. NO. 105-374, 112 STAT. 3383 (1998) [hereinafter Child Custody and Visitation Act].
4. See, e.g., TEX. FAM. CODE ANN. § 153.432(a); VT. STAT. ANN. tit. 15, § 1013(a) (1997).
5. See, e.g., MONT. CODE ANN. § 40-9-102(1).
6. Charles P. Sabatino *et al.*, ABA LEGAL GUIDE FOR OLDER AMERICANS 139 (Random House 1998) [hereinafter LEGAL GUIDE FOR OLDER AMERICANS].

7. See, e.g., N.C. GEN. STAT. § 50-13.2(b1) (1998); N.H. REV. STAT. ANN. § 458:17-d (I) (1998) (1998); TEX. FAM. CODE ANN. § 153.432(a) (1997); W.VA. CODE § 48-2B-2 (1998).
8. See, e.g., ARIZ. REV. STAT. ANN. § 25-409(B) (1998); ARK. CODE ANN. § 9-13-103(a)(1) (1997); FLA. STAT. ANN. ch. 752.001 (1998); IDAHO CODE § 32-719 (1998); 750 ILL. COMP. STAT. ANN. 5/607(b)(1) (1999); IOWA CODE § 598.35 (1999); MINN. STAT. ANN. § 257.022(2a) (1998); N.D. CENT. CODE § 14-09-05.1 (1997); WIS. STAT. ANN. § 767.245(1) (1997).
9. See, e.g., OR. REV. STAT. § 109.121(7)(a) (1997) (defining grandparent to exclude a step-grandparent); cf. W.VA. CODE § 48-2B-2 (1998) (defining grandparent as “a person married or previously married to a biological grandparent”).
10. See, e.g., IND. CODE ANN. § 31-17-5-3(3) (1998); W.VA. CODE § 48-2B-4(c) (1998).
11. See, e.g., IND. CODE ANN. §§ 31-17-5-3(3)(A) to (C); OR. REV. STAT. § 109.121(2)(a)–(d) (1998).
12. See, e.g., S.D. CODIFIED LAWS § 25-4-52 (1998).
13. The term “intact family” here means that the parents are married and the parents and children reside in the same household.
14. LEGAL GUIDE FOR OLDER AMERICANS, *supra* note 6, at 141.
15. See Sarah Norton Harpring, Comment, *Wide-Open Grandparent Visitation Statutes: Is the Door Closing?* 62 U. CIN. L. REV. 1659 (1994).
16. See, e.g., IND. CODE ANN. § 31-17-5-3(D) (1998).
17. See, e.g., N.Y. MATRIMONIAL AND FAM. LAW FORMS §§ 20:173 and 20:174 (McKinney, WESTLAW current through Feb. 1997).
18. See *id.*
19. See, e.g., IND. CODE ANN. § 31-17-5-3(E).
20. See, e.g., N.Y. MATRIMONIAL AND FAM. LAW FORMS §§ 20:173 and 20:174 (1997).
21. See, e.g., ARK. CODE ANN. § 9-13-103(a)(1)(A) (1997); CAL. FAM. CODE ANN. § 3102(a) (1998); COLO. REV. STAT. ANN. § 19-1-117(1)(c) (1998); GA. CODE ANN. § 19-7-3(a) (1998); 750 ILL. COMP. STAT. ANN. 5/607(b)(1)(C) (1998); IND. CODE ANN. § 31-17-5-1(a)(1) (1998); IOWA CODE ANN. § 598.35(3) (1998); NEV. REV. STAT. § 125A.330(1) (1997); S.C. CODE ANN. § 20-7-420(33) (1998); UTAH CODE ANN. § 30-5-2(1) (1998); VT. STAT. ANN. tit. 15, § 1012 (1997).
22. See, e.g., ARK. CODE ANN. § 9-13-103(a)(1)(A) (1997); COLO. REV. STAT. ANN. § 19-1-117(1)(a) (1998); GA. CODE ANN. § 19-7-3(b) (1998); IND. CODE ANN. § 31-17-5-1(a)(2) (1998); IOWA CODE ANN. §§ 598.35(1) and (2) (1999); S.C. CODE ANN. § 20-7-420(33) (1998); UTAH CODE ANN. § 30-5-2(1) (1998); NEV. REV. STAT. § 125A.330(1) (1997).
23. See, e.g., ARK. CODE ANN. § 9-13-103(a)(1)(A) (1997); COLO. REV. STAT. ANN. § 19-1-117(1)(a) (1998); GA. CODE ANN. § 19-7-3(b) (1998); NEV. REV. STAT. § 125A.330(1) (1997); UTAH CODE ANN. § 30-5-2(1) (1998).
24. See, e.g., 750 ILL. COMP. STAT. ANN. 5/607(b)(1)(A) (1999); S.C. CODE ANN. § 20-7-420(33) (1998).
25. See, e.g., CAL. FAM. CODE ANN. §§ 3102, 3103, 3104 (1998); W.VA. CODE § 48-2B-4(a) (1998).
26. See, e.g., COLO. REV. STAT. ANN. § 19-1-117(1)(a) (1998).
27. See, e.g., 750 ILL. COMP. STAT. ANN. 5/607(b)(1)(D) (1999).
28. See, e.g., ALA. CODE § 30-3-4(2) (1998); IOWA CODE ANN. § 598.35(7) (1999); MO. ANN. STAT. §§ 452.402(1)(2) and 452.402(1)(3) (1998); UTAH CODE ANN. § 30-5-2 (2)(c) (1998).
29. See, e.g., TEX. FAM. CODE ANN. § 153.433(2)(A) (1998).
30. See, e.g., ARIZ. REV. STAT. ANN. § 25-409(A)(2) (1998) (relating that the court may grant reasonable visitation rights if it would be in the child’s best interests where the parent “has been missing for at least three months” or the “parent’s location has not been determined and the parent has been reported as missing to a law enforcement agency”); CAL. FAM. CODE ANN. § 3104(b)(2) (noting that a petition for grandparent visitation may be filed where “one of the parents has been absent for more than one month without the other spouse knowing the whereabouts of the absent spouse”); 750 ILL. COMP. STAT. ANN.

- 5/607(b)(1)(B) (1999) (filing a petition for grandparent visitation privileges may occur where "one of the parents has been absent from the marital abode for more than one month without the spouse knowing his or her whereabouts"); W.VA. CODE § 48-2B-7(a)(2) (1998) ("The whereabouts of the party through which the grandparent is related to the minor child are unknown to the party bringing the [pending] action [for divorce, custody, legal separation, annulment, or establishment of paternity] and to the grandparent who filed the motion for visitation.").
31. See, e.g., FLA. STAT. ANN. ch. 752.01(1)(c) (1998).
 32. See, e.g., VT. STAT. ANN. tit. 15, § 1012 (1999).
 33. See *id.*
 34. See, e.g., IOWA CODE ANN. § 598.35(4) (1999); MASS. GEN. LAWS ch. 119, § 23(A (1998)); NEV. REV. STAT. § 125A.330(2) (1998); TENN. CODE ANN. §§ 36-6-302(c)(1)(B), 36-6-302(c)(2) (1997).
 35. See, e.g., MINN. STAT. ANN. § 257.022(2a) (1998) (allowing grandparents to petition for reasonable visitation if grandchild "has resided with grandparents or great-grandparents for a period of 12 months or more, and is subsequently removed from the home by the minor's parents"); N.M. STAT. ANN. §§ 40-9-2(C) and (D) (1999) (permitting visitation petition if parent removes child less than six years of age from grandparent's home after child has lived there for at least three months or parent removes child age six or older after he or she has resided with grandparents for at least six months); 23 PA. CONS. STAT. ANN. § 5313(a) (1998) (allowing petition for reasonable visitation if grandchild lived with grandparent(s) for 12 months or more and parents subsequently removed child from the home); TEX. FAM. CODE ANN. § 153.433(F) (1997) (ordering reasonable access if "child has resided with the grandparent requesting access to the child for at least six months within the 24-month period preceding the filing of the petition").
 36. See *infra* notes 46 through 49 and accompanying text.
 37. See *id.*
 38. See, e.g., MD. CODE ANN., FAM. LAW § 9-102 (1998); N.J. STAT. ANN. § 9:2-7-1 (1998); OKLA. STAT. tit. 10, § 60.16 (1998).
 39. N.Y. DOM. REL. LAW § 72 (1999).
 40. See Rebecca Brown, Comment, *Grandparent Visitation and the Intact Family*, 16 S. ILL. U.L.J. 133 (1991); Christopher W. Nicholson and Murray O. Singerman, *Grandparent Visitation and Intact Marriages: An Unresolved Maryland Family Law Issue*, 21 U. BALT. L. REV. 311 (1992).
 41. See, e.g., Matter of Emanuel S. v. Joseph E., 577 N.E.2d 27, 39 (1991) (relying on "equitable circumstances" provision of grandparent visitation statute to resolve the issue of standing to petition for visitation in an intact marriage in favor of the grandparents where grandparents previously formed relationship with grandchildren, or made sincere effort to establish a relationship but such efforts were frustrated by children's parents); King v. King, 828 S.W.2d 630 (Ky. 1992) (ordering grandparent visitation in an intact family), *cert. denied*, 506 U.S. 941 (1992); Hawk v. Hawk, 855 S.W.2d 573 (Tenn. 1993) (addressing issue of grandparent visitation in an intact family concluding that court interference constitutes an unjustified invasion into the "protected sphere of family life"); *cf.* Goff v. Goff, 844 A.2d 1087, 1091 (Wyo. 1993) (ruling that court-ordered grandparent visitation is in the grandchild's best interests even when awarded against the parents' objections); see generally Alicia C. Klyman, *Grandparent Visitation Rights—Court Protects Parental Privacy Rights Over "Child's Best Interests,"* 24 MEM. ST. U.L. REV. 413 (1994).
 42. See, e.g., Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 499 (1977) (finding "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment"); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (holding "custody, care and nurture of the child reside first in the parents"); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (recognizing liberty interest guaranteed by the Fourteenth Amendment includes freedom "to marry, establish a home and bring up children"); see generally Judith L. Shandling, Note, *The Constitutional Constraints on Grandparents' Visitation Statutes*, 86 COLUM. L. REV. 118, 122 (1986).
 43. See, e.g., CONN. GEN. STAT. ANN. § 46b-59 (1999); HAW. REV. STAT. ANN. § 571-46.3 (1998); IDAHO CODE § 32-719 (1998); N.Y. DOM. REL. LAW § 72 (1999); N.D. CENT. CODE § 14-09-05.1 (1997);

- OKLA. STAT. ANN. tit. 10, § 5 (A)(1) (1998); S.D. CODIFIED LAWS § 25-4-52; *cf.* DEL. CODE ANN. tit. 10, § 1031(7)(a) (1998); GA. CODE ANN. § 19-7-3(b) (1998).
44. LEGAL GUIDE FOR OLDER AMERICANS, *supra* note 6, at 141.
 45. *See id.*
 46. *See, e.g.*, KAN. STAT. ANN. § 38-129 (1998); MD. CODE ANN., FAM. LAW § 9-102 (1998); MINN. STAT. § 257.022; *see generally* Nicole E. Miller, *The Best Interests of All Children: An Examination of Grandparent Visitation Rights Regarding Children Born out of Wedlock*, 42 N.Y. L. REV. 179 (1998).
 47. *See, e.g.*, LA. REV. STAT. ANN. § 344(B) (1998) (“When the parents of a minor child live in concubinage and one of the parents dies, the parents of the deceased party may have reasonable visitation rights” to the child(ren)); W.VA. CODE § 48-2B-4(b) (“A grandparent may petition the circuit court for an order granting visitation with his or her grandchild regardless of whether the parents of the child are married”).
 48. *See, e.g.*, ARK. CODE ANN. §§ 9-13-103(a)(1)(C) (1997) (allowing visitation where “[t]he child is illegitimate, and the person is a maternal grandparent of the illegitimate child”), 9-13-103(a)(1)(D) (allowing visitation where “[t]he child is illegitimate, and the person is a paternal grandparent of the illegitimate child, and paternity has been established by a court of competent jurisdiction”), and 9-13-103(c)(3) (applying grandparent visitation statute where child is illegitimate); FLA. STAT. ANN. ch. 752, § 752.01(1)(d) (1998) (awarding reasonable grandparent visitation when it is in the child’s best interests if “[t]he minor child was born out of wedlock and not later determined to be a child born within wedlock”); *cf.* Brunetti v. Saul, 724 So.2d 142 (Fla. Dist. Ct. App. 1998) (holding statute that provided grandparent visitation rights for children born out of wedlock violated parents’ right of privacy under state constitution); Ocasio v. McGlothlin, 719 So.2d 918 (Fla. Dist. Ct. App. 1998) (finding facially unconstitutional Florida’s statutory provision permitting reasonable grandparent visitation where child was born out of wedlock and not later determined to be child born within wedlock); 750 ILL. COMP. STAT. ANN. 5/607(b)(2)(A) (1999) (noting that state law does not give presumed paternal grandparents standing to pursue visitation where paternity of putative father has not been legally established); IND. CODE ANN. §§ 31-17-5-1(a)(3) and (b) (1998) (“court may not grant visitation rights to a paternal grandparent of a child who is born out of wedlock . . . if the child’s father has not established paternity in relation to the child”); IOWA CODE ANN. § 598.35(6) (1999) (demanding judicial establishment of paternity for child born out of wedlock); MASS. GEN. LAWS ANN. ch. 119, § 39D (1998) (allowing paternal grandparents to seek visitation for grandchild born out of wedlock whose paternity has been adjudicated by a court of competent jurisdiction or whose father has signed an acknowledgment of paternity); NEB. REV. STAT. § 43-1802(1)(c) (1998) (allowing visitation where “[t]he parents of the minor child have never been married but paternity has been legally established”); N.H. REV. STAT. ANN. § 458:17-d(IV) (1998) (attaching to grandparent visitation petition proof of legitimization by the parent or establishment of paternity if the child’s parent is unwed); OHIO REV. CODE ANN. § 3109.12(A) (1998) (relating that maternal grandparents may request reasonable visitation rights and paternal grandparents may do same if child’s father acknowledges paternity and court confirms said paternity); OKLA. STAT. ANN. tit. 10, §§ 5(A)(2), (5) and (6) (1998) (specifying paternal grandparents will not receive visitation without judicial determination of child’s paternity); WIS. STAT. ANN. §§ 767.245(3)(a) (1998) (allowing visitation where “[c]hild is a nonmarital child whose parents have not subsequently married each other”), and 767.245(4) (requiring establishment of paternity in certain circumstances).
 49. *See Posey v. Powell*, 965 S.W.2d 836 (Ky. Ct. App. 1998).
 50. *See generally* Christine Davik-Galbraith, Note, *Grandma, Grandpa, Where Are You?—Putting the Focus of Grandparent Visitation Statutes on the Best Interests of the Child*, 3 ELDER L.J. 143 (1995); Catherine Bostock, *Does the Expansion of Grandparent Visitation Rights Promote the Best Interests of the Child?: A Survey of Grandparent Visitation Laws in the Fifty States*, 27 COLUM. J.L. & SOC. PROBS. 319 (1994); Richard S. Victor, *Grandparent Rights to Visitation*, 16 FAM. ADVOC. 40 (1993) (discussing factors courts should consider before granting grandparent visitation).

51. *See, e.g.*, ARK. CODE ANN. § 9-13-103(a)(2) (1997); 750 ILL. COMP. STAT. ANN. 5/607(b)(1) (1999); N.C. GEN. STAT. § 50-13.2(b) (1998); OR. REV. STAT. § 109.121(5) (1998).
52. LEGAL GUIDE FOR OLDER AMERICANS, *supra* note 6, at 140.
53. *See, e.g.*, OR. REV. STAT. § 109.121(1) (1998) (“The power . . . to grant visitation rights to grandparents is discretionary and shall be exercised only when the court determines that it would be in the best interests and welfare of the minor children”).
54. *See, e.g.*, N.J. STAT. ANN. § 9:2-7.1(b)(4) (1998); WASH. REV. CODE § 26.09.240(6)(d) (1998); W.VA. CODE § 48-2B-5(b)(5) (1998).
55. *See, e.g.*, FLA. STAT. ANN. ch. 752, § 752.01(2)(a) (1998); NEV. REV. STAT. § 125A.330(1)(g) (1997); OKLA. STAT. tit. 10, § 5(b)(7); VT. STAT. ANN. tit. 15, § 1013(b)(8) (1997).
56. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-409(C)(5) (1998).
57. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-409(C)(1); FLA. STAT. ANN. ch. 752, § 752.01(2)(b); N.J. STAT. ANN. § 9:2-7.1(b)(1) (1999); NEV. REV. STAT. § 125A.330(1)(c); N.M. STAT. ANN. § 40-9-2(G)(2); OKLA. STAT. ANN. tit. 10, § 5(B)(2); WASH. REV. CODE ANN. § 26.09.240(6)(a) (1998) (explaining that court considers the “strength of the relationship between the child and the petitioner”); W.VA. CODE § 48-2B-5(b)(2) (1998).
58. *See, e.g.*, VT. STAT. ANN. tit. 15, § 1013(b)(3).
59. *See, e.g.*, NEV. REV. STAT. § 125A.330(1)(a); VT. STAT. ANN. tit. 15, § 1013(b)(1).
60. *See, e.g.*, NEV. REV. STAT. § 125A.330(1)(b)(1); VT. STAT. ANN. tit. 15, § 1013(b)(2).
61. *See, e.g.*, W.VA. CODE § 48-2B-5(b)(10) (1998).
62. *See, e.g.*, N.H. REV. STAT. ANN. § 458:17-d; N.J. REV. ANN. § 9:2-7.1(c) (1998) (“prima facie evidence that visitation is in the child’s best interest if the applicant had, in the past, been a full-time caretaker for the child”); N.M. STAT. ANN. § 40-9-2(G)(8); W.VA. CODE § 48-2B-5(B)(11) (1999) (“Whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent’s residence”).
63. *See, e.g.*, N.J. STAT. ANN. § 9:2-7.1(b)(3) (1998); W.VA. CODE § 48-2B-5(b)(4) (1998).
64. *See, e.g.*, N.J. STAT. ANN. § 9:2-7.1(b)(2); N.M. STAT. ANN. § 40-9-2(G)(3) (1999); W.VA. CODE § 48-2B-5(b)(3).
65. *See, e.g.*, N.M. STAT. ANN. § 40-9-2(G)(4) (1999).
66. *See, e.g.*, N.H. REV. STAT. ANN. § 458:17-d(II)(d).
67. *See, e.g.*, W.VA. CODE § 48-2B-5(b)(1) (1998).
68. *See, e.g.*, ALASKA STAT. § 25.24.150(c)(3) (1998); CONN. GEN. STAT. ANN. § 46b-59 (1999); FLA. STAT. ANN. ch. 752, § 752.01(2)(c) (1998); MINN. STAT. ANN. § 257.022(2b)(3) (1998); N.H. REV. STAT. ANN. § 458:17-d(II)(g); NEV. REV. STAT. § 125A.330(1)(f) (1997); OKLA. STAT. ANN. tit. 10, § 5(B)(3) (1998); VT. STAT. ANN. tit. 15, § 1013(b)(6) (1997).
69. *See, e.g.*, W.VA. CODE § 48-2B-5(b)(12).
70. *See, e.g.*, WASH. REV. CODE ANN. § 26.09.240(6)(c) (1998).
71. *See, e.g.*, FLA. STAT. ANN. ch. 752, § 752.01(2)(d) (1998); OKLA. STAT. ANN. tit. 10, § 5(B)(4); VT. STAT. ANN. tit. 15, § 1013(b)(5).
72. *See, e.g.*, GA. CODE ANN. § 19-7-3(c) (1998).
73. *See, e.g.*, MO. ANN. STAT. § 452.402(2) (1998).
74. *See, e.g.*, FLA. STAT. ANN. ch. 752, § 752.01(2)(e); NEV. REV. STAT. § 125A.330(1)(e); OKLA. STAT. ANN. tit. 10, § 5(B)(5); VT. STAT. ANN. tit. 15, § 1013(b)(5).
75. *See, e.g.*, NEV. REV. STAT. § 125A.330(1)(h) (1998).
76. *Id.* at § 125A.330(1)(b)(3).
77. *See, e.g.*, N.J. STAT. ANN. § 9:2-7.1(b)(5) (1998); N.M. STAT. ANN. § 40-9-2(G)(5) (1999); WASH. REV. CODE ANN. § 26.09.240(6)(e) (1998); W.VA. CODE § 48-2B-5(b)(6) (1998).
78. *See, e.g.*, N.M. STAT. ANN. § 40-9-2(G)(6).

79. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-409(C)(4) (1998).
80. *See, e.g.*, W.VA. CODE § 48-2B-5(b)(7).
81. *See, e.g.*, ALASKA STAT. § 25.24.150(c)(7) (1998); N.J. STAT. ANN. § 9:2-7.1(b)(7) (1998); N.M. STAT. ANN. § 40-9-2(G)(7); WASH. REV. CODE ANN. § 26.09.240(6)(g); W.VA. CODE § 48-2B-5(b)(9).
82. *See, e.g.*, CAL. FAM. CODE ANN. §§ 3103(b) and 3104 (1998).
83. *See, e.g.*, NEV. REV. STAT. § 125A.330(1)(b)(2) (1998).
84. *See, e.g.*, N.H. REV. STAT. ANN. § 458:17-d(II)(f) (1998).
85. *See, e.g.*, NEV. REV. STAT. § 125A.330(1)(d); VT. STAT. ANN. tit. 15, § 1013(b)(4) (1997).
86. *See, e.g.*, N.J. STAT. ANN. § 9:2-7.1(b)(6) (1998); WASH. REV. CODE ANN. § 26.09.240(6)(f) (1998); W.VA. CODE § 48-2B-5(b)(8) (1998).
87. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-409(C)(2) (1998).
88. *See id.* at § 25-409(C)(3).
89. *See, e.g.*, ALASKA STAT. § 25.24.150(c)(9) (1998); FLA. STAT. ANN. ch. 752, § 752.01(2)(f) (1998); N.H. REV. STAT. ANN. § 458:17-d(II)(h) (1998); N.J. STAT. ANN. § 9:2-7.1(b)(8); NEV. REV. STAT. § 125A.330(1)(h); N.M. STAT. ANN. § 40-9-2(G)(1) (1999); OKLA. STAT. ANN. tit. 10, § 5(B)(6) (1998); WASH. REV. CODE ANN. § 26.09.240(6)(h) (1998); VT. STAT. ANN. tit. 15, § 1013(b)(8) (1997); W.VA. CODE § 48-2B-5(b)(11) (1998).
90. *See, e.g.*, CAL. FAM. CODE ANN. § 3102(b) (1998); MINN. STAT. ANN. §§ 257.022(1) and (2)(a)(2) (1998); N.D. CENT. CODE § 14-09-05.1; 23 PA. CONS. STAT. ANN. § 5311 (1998).
91. *See, e.g.*, OR. REV. STAT. § 109.121(1)(a)(A) (1998).
92. *See, e.g.*, IND. CODE ANN. § 31-17-5-2(2)(b). (1998)
93. *See, e.g.*, S.C. CODE ANN. § 20-7-420(33) (1998).
94. *See, e.g.*, KAN. STAT. ANN. § 38-129(a) (1998); IOWA CODE ANN. § 598.35(7) (1999); N.C. GEN. STAT. § 50-13.2 (b1) (1998).
95. *See, e.g.*, NEB. REV. STAT. § 43-1802(2) (1998) (requiring affidavit showing “that a significant beneficial relationship exists, or has existed in the past, between the grandparent and the child and that it would be in the best interests of the child to allow such a relationship to continue”); WASH. REV. CODE ANN. § 26.09.240(3) (1998) (“[P]etition for visitation or a motion to intervene...shall be dismissed unless the petitioner or intervenor can demonstrate by clear and convincing evidence that a significant relationship exists with the [grand]child”).
96. *See, e.g.*, MISS. CODE ANN. §§ 93-16-3(2)(a) and (3) (1998) (defining “viable relationship”).
97. *See, e.g.*, CAL. FAM. CODE ANN. § 3104(a)(1) (1998) (requiring “preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interests of the child”).
98. *See, e.g.*, W.VA. CODE § 48-2B-6(a) (1998).
99. *See id.* at § 48-2B-6(b) (1998).
100. *See, e.g.*, ALASKA STAT. § 25.24.150(b) (1998); GA. CODE ANN. § 19-7-3(d)(1) (1998); MO. REV. STAT. § 452.402(3) (1998); MONT. CODE ANN. § 40-9-102(4) (1997); N.H. REV. STAT. ANN. § 458:17-d(II)(f) (1998); WASH. REV. CODE ANN. § 26.09.240(8) (1998); W.VA. CODE § 48-2B-4(d); WIS. STAT. ANN. § 767.245(3m)(c) (1997); WYO. STAT. ANN. § 20-7-101(a) (1998)).
101. *See, e.g.*, MO. ANN. STAT. § 452.402(3); WYO. STAT. ANN. § 20-7-101(a).
102. *See, e.g.*, MO. ANN. STAT. § 452.402(5); W.VA. CODE § 48-2B-6(a).
103. *See, e.g.*, CONN. GEN. STAT. ANN. § 46b-59 (1999); N.H. REV. STAT. ANN. § 458:17-d(II)(g) (1998); NEV. REV. STAT. § 125A.330(1)(f) (1997); OKLA. STAT. ANN. tit. 10, § 5(B)(3) (1998); VT. STAT. ANN. tit. 15, § 1013(b)(6) (1997).
104. *See, e.g.*, UTAH CODE ANN. § 30-5-2(2) (1998) (announcing that despite a presumption that a parent’s decision with regard to grandparent visitation is reasonable, “[t]he court may override

the parent's decision and grant reasonable visitation rights to a grandparent"); *cf.* DEL. CODE ANN. tit. 10, § 1031(7)(a) (1998) (highlighting that "when the natural or adoptive parents of the child are cohabiting as husband and wife, grandparental visitation may not be granted over both parents' objection").

105. *See, e.g.*, UTAH CODE ANN. § 30-5-2(2)(e).
106. *See, e.g.*, N.J. STAT. ANN. § 9:2-7.1(a) (1998).
107. *See, e.g.*, CAL. FAM. CODE ANN. §§ 3103(d) and 3104(e) (1998); UTAH CODE ANN. § 30-5-2(2).
108. *See, e.g.*, N.D. CENT. CODE § 14-09-05.1 (1997).
109. *See, e.g.*, MO. ANN. STAT. § 452.402(2) (1998).
110. FLA. SESS. LAW SERV. ch. 99-8 (H.B. 1053), § 61.13(6) (West 1999).
111. *See* W.VA. CODE § 48-2B-8(b)(1) (1998).
112. *See id.* at § 48-2B-8(b)(2).
113. *See id.* at § 48-2B-8(b)(3).
114. *See id.* at § 48-2B-10(a).
115. *See, e.g.*, W.VA. CODE § 48-2B-4(b) (1998); NEB. REV. STAT. § 43-1802(3) (1998); OR. REV. STAT. § 109.121(1)(c)(B)(2)(e) (1998).
116. *See, e.g.*, W.VA. CODE § 48-2B-10(b).
117. *See, e.g.*, CAL. FAM. CODE ANN. § 3103(b) (1998); N.H. REV. STAT. ANN. § 458:17-d(V) (1998).
118. *See, e.g.*, GA. CODE ANN. § 19-7-3(a) (1998); MINN. STAT. ANN. § 257.022(3) (1998); MO. ANN. STAT. §§ 452.402(1)(4) and 452.406(6) (1998); MONT. CODE ANN. § 40-9-102(5) (1997); W.VA. CODE § 48-2B-9(b) (1998).
119. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-409(F) (1997); CAL. FAM. CODE ANN. § 3103(c); W.VA. CODE § 48-2B-9(a); MASS. GEN. LAWS ANN. ch. 119, § 39D (1998).
120. *See, e.g.*, GA. CODE ANN. § 19-8-19.
121. Child Custody and Visitation Act, *supra* note 3.
122. *See, e.g.*, ALA. CODE § 30-3-4(1) (1998); HAW. REV. STAT. ANN. § 571-46.3 (1998); KAN. STAT. ANN. § 38-129(b) (1998); KY. REV. STAT. ANN. § 405.021(1) (1998); R.I. GEN. LAWS § 15-5-24.1 (1998); WIS. STAT. ANN. § 767.245(5) (1997); UTAH CODE ANN. § 78-32-12.2 (1998).
123. *See, e.g.*, W.VA. CODE § 48-2B-4(a) (1998).
124. *See, e.g.*, ALA. CODE §§ 30-3-4(1) and (2); ALASKA STAT. § 25.24.150(a) (1998); ARIZ. REV. STAT. ANN. § 25-409(E); IOWA CODE ANN. § 598.35(2) (1998); MICH. COMP. LAWS ANN. § 722.27(1) (1998); MINN. STAT. ANN. § 257.022(2)(a) (1998); MISS. CODE ANN. § 93-16-3(1) (1998); MO. ANN. STAT. § 452.402(1)(1) (1998); NEB. REV. STAT. § 43-1802(1)(b) (1998); NEV. REV. STAT. § 125A.330(3)(a) (1997); N.C. GEN. STAT. § 50-13.2(b1); N.M. STAT. ANN. § 40-9-2(A) (1999); N.D. CENT. CODE § 14-09-05.1 (1997); OR. REV. STAT. § 109.121(1)(b) (1998); W.VA. CODE § 48-2B-4(a) (1998).
125. *See, e.g.*, W.VA. CODE § 48-2B-4(a).
126. *See, e.g.*, OR. REV. STAT. § 109.121(4) (1998).
127. *See, e.g.*, GA. CODE ANN. §§ 19-7-3(d)(2) and (e) (1998); N.D. CENT. CODE § 14-09-05.1 (1997); VA. CODE ANN. § 20-124.4 (1999); UTAH CODE ANN. § 78-32-12.2(4) (1998); WASH. REV. CODE ANN. § 26.09.240(5)(b). (1998)
128. *See, e.g.*, FLA. STAT. ANN. ch. 752, § 752.015 (1998).
129. *See id.* at § 109.121(4).
130. *See, e.g.*, CAL. FAM. CODE ANN. §§ 3103(c) and 3104(c) (1998); COLO. REV. STAT. ANN. § 19-1-117(2) (1998); FLA. STAT. ANN. ch. 752, § 752.02 (1998); HAW. REV. STAT. ANN. § 571-46.3 (1998); OR. REV. STAT. § 109.121(3) (1998).
131. HAW. REV. STAT. ANN. § 571-46.3.
132. *See, e.g.*, OR. REV. STAT. §§ 109.121(3) and (4).
133. *See, e.g.*, *Martin v. Coop*, 693 So.2d 912 (Miss. 1997) (granting paternal grandparents visitation totaling 86 days per year in even-numbered years and 81 days per year in odd-numbered years following death of child's father was abuse of discretion, because grandparents had improperly been awarded same visitation as would have been awarded to noncustodial parent); *Sketo v. Brown*, 559 So.2d 381 (1990) (giving paternal grand-

mother visitation rights was too extensive where she was given the right to exercise visitation with children every other week from 6 p.m. on Friday to 6 p.m. on Saturday, every other Wednesday from 6 p.m. to 8 p.m., one day either before or after certain holidays and each child's birthday, and one week every summer).

134. *See, e.g., Sarchet v. Ziegler*, 663 N.E.2d 25 (Ill. 1996) (requesting one week in the summer, two days at Christmas, alternating weekends, and part of Mother's Day is similar to visitation noncustodial parents expect to receive).
135. *See Weybridge v. Puckett*, 635 N.E.2d 119 (D.Ill. 1994).
136. N.M. LEGIS. ch. 73 (S.B. 174) § 40-9-2(I) (1999).
137. *See, e.g., W.VA. CODE* § 48-2B-8(b)(1) (1998).
138. *See, e.g., MO. ANN. STAT.* § 452.402(4) (1998).
139. *See N.J. STAT. ANN.* § 52:27d-9.1 (1998).
140. *See id.*
141. 750 ILL. COMP. STAT. 5/607(d)(1)(i) (West 1999).
142. 750 ILL. COMP. STAT. 5/607(d)(1)(ii) (West 1999).